

**REMARKS**

Applicants wish to thank the Examiner for considering the present application. Claims 1-21 are pending in the application. Claims 13-17 are withdrawn from consideration. Applicants respectfully request the Examiner for a reconsideration of the rejections.

**REJECTION UNDER 35 U.S.C § 103**

Claims 1-7, 9-12, 18 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hendricks et al. (U.S. 6,160,989) in view of Eldering et al. (U.S. 6,704,930) and Breslauer (US 6,637,027). Applicants respectfully traverse.

The Hendricks reference illustrates a concatenated cable system 210 in Figure 1. While it is true that the concatenated cable system may be replaced by a cellular network as described in Figure 7, there is no teaching or suggestion for an allocated bandwidth having excess bandwidth. For the excess bandwidth the Examiner points to col. 10, ll. 28-51, and Fig. 3, reference numeral 216. Box 216 merely illustrates analog signals, digital compressed signals, other analog or digital signals and upstream interactivity. There is no teaching or suggestion in these portions for excess bandwidth and inserting digital over-the-air electronic content into the excess bandwidth portion. It appears that reference numeral 216 is merely referring to the media for communicating signals between the network controller 214 and the set top terminal 220. There is no teaching that any of these signals is communicated in anything but an allocated portion. The system of claim 1 clearly differentiates that a channel signal has a bandwidth, all of which may not be used. The electronic content is broadcast in the excess bandwidth.

The Eldering reference is cited for teaching electronic content over a first portion of an allocated frequency spectrum. Although multiple channels are illustrated in prior art Fig. 1, the Eldering reference does not teach or suggest combining the reception of electronic content in an

excess bandwidth portion of a digital channel signal. Although the digital program streams are described as multiplex streams that vary over time, there is no teaching that excess bandwidth is used for digital over-the-air electronic content corresponding to electronic content received from a satellite. The Examiner then points to col. 3, ll. 20-22 in the Hendricks reference for motivation to combine. The passage in Hendricks, col. 3, ll. 20-22 states:

“What is needed is a network controller for a cable headend that accommodates different bandwidth availability between cable headend and certain viewer homes.”

Then, the Examiner points to col. 1, ll. 46-49 of the Eldering reference for motivation.

This sentence states:

“Thus, it is desirable to offer enhanced services in the digital programming stream as well as to preserve the integrity of the digital programming stream.”

Neither of these references teaches or suggests the use of excess bandwidth for communicating electronic content. Further, neither the Hendricks reference nor the Eldering reference teaches conditional access for accessing the electronic content.

The Breslauer reference is set forth for disclosing a system that controls access to broadcast services. The Examiner points to the conditional access manager 314 and col. 7, ll. 26-27. Further, the Examiner points to col. 8, l. 42 through col. 9, l. 12. Applicants have reviewed these passages and can find no teaching or suggestion of “a user appliance receiving said over-the-air electronic content using conditional access software” wherein the electronic content is communicated through an excess bandwidth portion of a digital television signal. Although Applicants agree that conditional access software is generally shown in the Breslauer reference, the conditional access software does not allow the user appliance to access the electronic content is communicated through an excess bandwidth portion of a digital television signal. The conditional access software as set forth in col. 1, ll. 41-59 allows the user to obtain content from

a broadcast data provider such as a television or radio broadcaster but not from excess bandwidth. Thus, the combination of references fails to meet the recitations of claim 1.

Therefore, Applicants respectfully submit that claims 1 and 9 are allowable since neither of the references teaches that the electronic content packages use conditional access software to receive the electronic content packages.

Claims 2-7, 10-12, 18 and 19 are also believed to be allowable for at least the same reasons set forth above.

Claim 2 recites that the over-the-air broadcast center is coupled to a stratospheric platform. Applicants agree that the Hendricks reference does teach the use of a satellite as illustrated in Figs. 1-3. However, there is no teaching of a stratospheric platform which is substantially different than a satellite. For one, a stratospheric platform is not in an earth orbit but rather within the stratosphere of the earth. This makes the stratospheric platform much different than a satellite. Therefore, Applicants respectfully submit that a stratospheric platform is not set forth in the Hendricks reference as described by the Examiner.

Claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Hendricks et al. (U.S. 6,160,989) in view of Eldering et al. (U.S. 6,704,930) and Breslauer (US 6,637,027) as applied to claim 1 above, and further in view of Owa et al. (U.S. 6,711,379).

The Owa reference does not teach or suggest the elements missing from claims 1 and 9. Therefore, Applicants respectfully submit that claim 8 is also allowable for the same reasons set forth in claim 1.

**CONCLUSION**

In light of the remarks above, Applicants submit that all objections and rejections are now overcome. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments which would place the application in better condition for allowance, the Examiner is respectfully requested to contact the undersigned attorney.


Should any fees be associated with this submission, please charge Deposit Account 50-0383.

Respectfully submitted,

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